

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 44 of 2021**

(Arising out of order dated 3.2.2021 passed by learned Single Judge in
WPC No.456/2021)

1. Vineet Agrawal, S/o Shri Suresh Kumar Agrawal, aged about 35 years.
2. Suresh Agrawal, S/o Moolchand Agrawal, aged about 63 years.

Both residents of Main Road, Bilha, District Bilaspur (CG)

---- Appellants/Petitioners

Versus

1. State of Chhattisgarh, through Secretary, Ministry of Town & Country Planning, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur (CG)
2. Joint Director, Town & Country Planning, Bilaspur.

---- Respondents

For Appellants	:	Mr. BP Sharma, Advocate assisted by Mr. M.L. Saket, Advocate.
For Respondents	:	Mr. Vikram Sharma, Dy. Government Advocate

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

19/02/2021

1. Challenge in this appeal is to the order dated 3.2.2021 passed by the learned Single Judge declining to interdict with the order dated 9.12.2020 passed by respondent No.2 under

Section 30 of the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (henceforth 'the Adhiniyam of 1973') by which application filed by appellants herein under Section 29 of the Adhiniyam of 1973 has been rejected.

2. Mr. B.P. Sharma, learned counsel for appellants submits that appellant No.2 is the registered owner of land bearing Khasra 492/7 situated in PC No.23/49, village Parsada, District Bilaspur (henceforth 'the subject land'). Appellant No.1 applied for grant of retail outlet dealership in response to an advertisement floated by the Bharat Petroleum Corporation Ltd. Letter of Intent for establishing a retail outlet in Transport Nagar, Parsad, District Bilaspur i.e. land bearing Khasra No.492/7 has been issued in favour of appellant No.1. Thereafter, appellant No.1 filed applications before the various departments seeking no objection. An application under Section 29 of the Adhiniyam of 1973 along with relevant documents has also been filed by appellants before respondent No.2 for grant of permission to develop the subject land. Respondent No.2 without considering the documents filed along with application and without affording opportunity of hearing to appellants, rejected the application filed under Section 29 of the Adhiniyam of 1973.

Learned Single Judge refused to entertain writ petition

only on the ground of availability of alternative remedy of filing appeal to appellants. He submits that the learned Single Judge has not taken into consideration the grounds urged in writ petition while relegating the appellants to avail the remedy of appeal before appropriate forum.

3. Mr. Vikram Sharma, learned Deputy Government Advocate for the State submits that the learned Single Judge has taken into consideration the specific provision under Section 31 of the Adhiniyam of 1973 which provides for filing of an appeal against the order of rejection of application filed under Section 29 of the Adhiniyam of 1973. Appellants are having efficacious alternative remedy to approach the appellate authority. He further contended that in the year 2006 itself respondent No.2 has formulated the Development Plan of the area where the subject land is situated and unless & until the said Development Plan is modified in accordance with law, respondent No.2 cannot grant permission. Respondent No.2 after assigning valid reasons had refused to grant permission under Section 29 of the Adhiniyam of 1973, as sought by appellants. Placing document across during course of hearing, he further contended that prior to filing of writ petition, appellants have made representation before the authority concerned to submit revised plan with additional documents, which has been received by respondent No.2 on 15.1.2021.

Said representation was decided on 19.1.2021 and appellant No.1 was also informed the reasons for non-granting permission vide letter dated 19.1.2021. He further submits that in the said letter it is very specifically mentioned that vide letter No.1686 dated 4.5.2006 permission for development of shops and complex over land bearing khasra No.492/7 has already been granted and on that land, the appellants have already raised construction over the land left for future development contrary to the Development Plan. Respondent No.2 is not having any jurisdiction to grant further permission for development of land, as sought for, on the land which is part of earlier permission and development plan. Appellants have not challenged in any manner the Development Plan already sanctioned by the Town and Country Planning Department.

4. At this stage, Mr. B.P. Sharma, learned counsel for appellants submits that atleast the appellants may be given an opportunity of hearing on the application filed by them under Section 29 of the Adhinyam of 1973 so that they may be able to explain their grievances to the competent authority.
5. We have heard learned counsel for the parties and perused the record.
6. Taking into consideration the submissions made by learned counsel for the parties, particularly the submission made by

learned counsel for the appellants that he is only seeking relief in this appeal that appellants may be heard and thereafter the competent authority to pass order on his application afresh, without commenting anything on merits of the case, we find it appropriate to direct respondent No.2 to pass fresh order on the application filed under Section 29 of the Adhiniyam of 1973 after affording opportunity of hearing to appellants. Appellants shall remain present in the office of respondent No.2 on **26.2.2021** and on the said date respondent No.2 shall pass fresh order after hearing the appellants. We make it clear that this Court has not commented anything on the merits of the case and rights of the parties. Respondent No.2 shall pass the order strictly in accordance with law.

7. Accordingly, writ appeal stands disposed of.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

roshan/-

Sd/-
(Parth Prateem Sahu)
Judge